

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 477

Introduced by Carlson, 38.

Read first time January 20, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend sections 46-290, 46-291,
2 46-701, 46-706, 46-707, and 46-739, Revised Statutes
3 Cumulative Supplement, 2008; to change provisions
4 relating to water transfer permits; to require reports of
5 title as prescribed; to provide for filing instruments of
6 transfer of water rights; to harmonize provisions; and to
7 repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-290, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 46-290 (1) (a) Except as provided in this section and
4 sections 46-2,120 to 46-2,130, any person having a permit to
5 appropriate water for beneficial purposes issued pursuant to
6 sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637
7 and who desires (i) to transfer the use of such appropriation to
8 a location other than the location specified in the permit, (ii)
9 to change that appropriation to a different type of appropriation
10 as provided in subsection (3) of this section, or (iii) to change
11 the purpose for which the water is to be used under a natural-flow,
12 storage, or storage-use appropriation to a purpose not at that time
13 permitted under the appropriation shall apply for approval of such
14 transfer or change to the Department of Natural Resources.

15 (b) The application for such approval shall be
16 accompanied by a report of title issued by an attorney or a
17 licensed abstractor, on a form prescribed by the department,
18 reflecting the existence of all liens evidenced by the filing of
19 a mortgage, trust deed, or other equivalent consensual security
20 interest against the tract or tracts of land to which the
21 appropriation is appurtenant and the name and address of each
22 lienholder, if any, and shall contain (i) the number assigned to
23 such appropriation by the department, (ii) the name and address of
24 the present holder of the appropriation, (iii) if applicable, the
25 name and address of the person or entity to whom the appropriation

1 would be transferred or who will be the user of record after a
2 change in the location of use, type of appropriation, or purpose of
3 use under the appropriation, (iv) the legal description of the land
4 to which the appropriation is now appurtenant, (v) ~~the name and~~
5 ~~address of each holder of a mortgage or deed of trust for the land~~
6 ~~to which the appropriation is now appurtenant,~~ (vi) if applicable,
7 the legal description of the land to which the appropriation is
8 proposed to be transferred, ~~(vii)~~ (vi) if a transfer is proposed,
9 whether other sources of water are available at the original
10 location of use and whether any provisions have been made to
11 prevent either use of a new source of water at the original
12 location or increased use of water from any existing source at that
13 location, ~~(viii)~~ (vii) if applicable, the legal descriptions of the
14 beginning and end of the stream reach to which the appropriation
15 is proposed to be transferred for the purpose of augmenting the
16 flows in that stream reach, ~~(ix)~~ (viii) if a proposed transfer is
17 for the purpose of increasing the quantity of water available for
18 use pursuant to another appropriation, the number assigned to such
19 other appropriation by the department, ~~(x)~~ (ix) the purpose of the
20 current use, ~~(xi)~~ (x) if a change in purpose of use is proposed,
21 the proposed purpose of use, ~~(xii)~~ (xi) if a change in the type
22 of appropriation is proposed, the type of appropriation to which a
23 change is desired, ~~(xiii)~~ (xii) if a proposed transfer or change is
24 to be temporary in nature, the duration of the proposed transfer or
25 change, and ~~(xiv)~~ (xiii) such other information as the department

1 by rule and regulation requires.

2 (2) If a proposed transfer or change is to be temporary
3 in nature, a copy of the proposed agreement between the current
4 appropriator and the person who is to be responsible for use of
5 water under the appropriation while the transfer or change is in
6 effect shall be submitted at the same time as the application.

7 (3) Regardless of whether a transfer or a change in
8 the purpose of use is involved, the following changes in type of
9 appropriation, if found by the Director of Natural Resources to
10 be consistent with section 46-294, may be approved subject to the
11 following:

12 (a) A natural-flow appropriation for direct out-of-stream
13 use may be changed to a natural-flow appropriation for aboveground
14 reservoir storage or for intentional underground water storage;

15 (b) A natural-flow appropriation for intentional
16 underground water storage may be changed to a natural-flow
17 appropriation for direct out-of-stream use or for aboveground
18 reservoir storage;

19 (c) A natural-flow appropriation for direct out-of-stream
20 use, for aboveground reservoir storage, or for intentional
21 underground water storage may be changed to an instream
22 appropriation subject to sections 46-2,107 to 46-2,119 if the
23 director determines that the resulting instream appropriation would
24 be consistent with subdivisions (2), (3), and (4) of section
25 46-2,115;

1 (d) A natural-flow appropriation for direct out-of-stream
2 use, for aboveground reservoir storage, or for intentional
3 underground water storage may be changed to an appropriation for
4 induced ground water recharge if the director determines that the
5 resulting appropriation for induced ground water recharge would be
6 consistent with subdivisions (2) (a) (i) and (ii) of section 46-235;
7 and

8 (e) The incidental underground water storage portion,
9 whether or not previously quantified, of a natural-flow or
10 storage-use appropriation may be separated from the direct-use
11 portion of the appropriation and may be changed to a natural-flow
12 or storage-use appropriation for intentional underground water
13 storage at the same location if the historic consumptive use
14 of the direct-use portion of the appropriation is transferred
15 to another location or is terminated, but such a separation and
16 change may be approved only if, after the separation and change,
17 (i) the total permissible diversion under the appropriation will
18 not increase, (ii) the projected consequences of the separation
19 and change are consistent with the provisions of any integrated
20 management plan adopted in accordance with section 46-718 or 46-719
21 for the geographic area involved, and (iii) if the location of the
22 proposed intentional underground water storage is in a river basin,
23 subbasin, or reach designated as overappropriated in accordance
24 with section 46-713, the integrated management plan for that river
25 basin, subbasin, or reach has gone into effect, and that plan

1 requires that the amount of the intentionally stored water that is
2 consumed after the change will be no greater than the amount of the
3 incidentally stored water that was consumed prior to the change.
4 Approval of a separation and change pursuant to this subdivision
5 (e) shall not exempt any consumptive use associated with the
6 incidental recharge right from any reduction in water use required
7 by an integrated management plan for a river basin, subbasin, or
8 reach designated as overappropriated in accordance with section
9 46-713.

10 Whenever any change in type of appropriation is approved
11 pursuant to this subsection and as long as that change remains in
12 effect, the appropriation shall be subject to the statutes, rules,
13 and regulations that apply to the type of appropriation to which
14 the change has been made.

15 (4) The Legislature finds that induced ground water
16 recharge appropriations issued pursuant to sections 46-233 and
17 46-235 and instream appropriations issued pursuant to section
18 46-2,115 are specific to the location identified in the
19 appropriation. Neither type of appropriation shall be transferred
20 to a different location, changed to a different type of
21 appropriation, or changed to permit a different purpose of use.

22 (5) In addition to any other purposes for which transfers
23 and changes may be approved, such transfers and changes may
24 be approved if the purpose is (a) to augment the flow in a
25 specific stream reach for any instream use that the department has

1 determined, through rules and regulations, to be a beneficial use
2 or (b) to increase the frequency that a diversion rate or rate of
3 flow specified in another valid appropriation is achieved.

4 For any transfer or change approved pursuant to
5 subdivision (a) of this subsection, the department shall be
6 provided with a report at least every five years while such
7 transfer or change is in effect. The purpose of such report shall
8 be to indicate whether the beneficial instream use for which the
9 flow is augmented continues to exist. If the report indicates that
10 it does not or if no report is filed within sixty days after
11 the department's notice to the appropriator that the deadline
12 for filing the report has passed, the department may cancel its
13 approval of the transfer or change and such appropriation shall
14 revert to the same location of use, type of appropriation, and
15 purpose of use as prior to such approval.

16 (6) A quantified or unquantified appropriation for
17 incidental underground water storage may be transferred to a new
18 location along with the direct-use appropriation with which it is
19 recognized if the director finds such transfer to be consistent
20 with section 46-294 and determines that the geologic and other
21 relevant conditions at the new location are such that incidental
22 underground water storage will occur at the new location. The
23 director may request such information from the applicant as
24 is needed to make such determination and may modify any such
25 quantified appropriation for incidental underground water storage,

1 if necessary, to reflect the geologic and other conditions at the
2 new location.

3 (7) Unless an incidental underground water storage
4 appropriation is changed as authorized by subdivision (3)(e)
5 of this section or is transferred as authorized by subsection
6 (6) of this section or subsection (1) of section 46-291, such
7 appropriation shall be canceled or modified, as appropriate, by
8 the director to reflect any reduction in water that will be stored
9 underground as the result of a transfer or change of the direct-use
10 appropriation with which the incidental underground water storage
11 was recognized prior to the transfer or change.

12 Sec. 2. Section 46-291, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 46-291 (1) Upon receipt of an application filed under
15 section 46-290 for a transfer in the location of use of an
16 appropriation, the Department of Natural Resources shall review
17 it for compliance with this subsection. The Director of Natural
18 Resources may approve the application without notice or hearing
19 if he or she determines that: (a) The appropriation is used and
20 will continue to be used exclusively for irrigation purposes; (b)
21 the only lands involved in the proposed transfer are (i) lands
22 within the quarter section of land to which the appropriation is
23 appurtenant, (ii) lands within such quarter section of land and
24 one or more quarter sections of land each of which is contiguous
25 to the quarter section of land to which the appropriation is

1 appurtenant, or (iii) lands within the boundaries or service
2 area of and capable of service by the same irrigation district,
3 reclamation district, public power and irrigation district, or
4 mutual irrigation or canal company; (c) after the transfer, the
5 total number of acres irrigated under the appropriation will be no
6 greater than the number of acres that could legally be irrigated
7 under the appropriation prior to the transfer; (d) all the land
8 involved in the transfer is under the same ownership or is within
9 the same irrigation district, reclamation district, public power
10 and irrigation district, or mutual irrigation or canal company;
11 (e) the transfer will not result in a change in the point of
12 diversion or the point of diversion will be changed but the
13 change meets the following requirements: (i) The new point of
14 diversion is on the same named stream, the same tributary, or
15 the same river or creek as the approved point of diversion; (ii)
16 the proposed point of diversion will not move above or below an
17 existing diversion point owned by another appropriator; and (iii)
18 the proposed point of diversion will not move above or below a
19 tributary stream or a constructed river return or a constructed
20 drain; and (f) the transfer will not diminish the water supply
21 available for or otherwise adversely affect any other surface
22 water appropriator. If transfer of an appropriation with associated
23 incidental underground water storage is approved in accordance
24 with this subsection, the associated incidental underground water
25 storage also may be transferred pursuant to this subsection as

1 long as such transfer would continue to be consistent with the
2 requirements of this subsection. If necessary, the boundaries of
3 the incidental underground water storage area may be modified to
4 reflect any change in the location of that storage consistent with
5 such a transfer. Transfers shall not be approved pursuant to this
6 subsection until the department has adopted and promulgated rules
7 and regulations establishing the criteria it will use to determine
8 whether proposed transfers are consistent with subdivision (1)(f)
9 of this section.

10 (2) If after reviewing an application filed under section
11 46-290 the director determines that it cannot be approved pursuant
12 to subsection (1) of this section, he or she shall cause a notice
13 of such application to be posted on the department's web site, to
14 be sent by certified mail to each holder of a mortgage or deed of
15 trust that is identified by the applicant pursuant to subdivision
16 ~~(1)(b)(v)~~ of section 46-290 each lienholder identified by the
17 report of title required under subdivision (1)(b) of section 46-290
18 and to any entity owning facilities currently used or proposed
19 to be used for purposes of diversion or delivery of water under
20 the appropriation, and to be published at the applicant's expense
21 at least once each week for three consecutive weeks in at least
22 one newspaper of general circulation in each county containing
23 lands to which the appropriation is appurtenant and, if applicable,
24 in at least one newspaper of general circulation in each county
25 containing lands to which the appropriation is proposed to be

1 transferred.

2 (3) The notice shall contain: (a) A description of the
3 appropriation; (b) the number assigned to such appropriation in
4 the records of the department; (c) the date of priority; (d) if
5 applicable, a description of the land or stream reach to which
6 such water appropriation is proposed to be transferred; (e) if
7 applicable, the type of appropriation to which the appropriation
8 is proposed to be changed; (f) if applicable, the proposed change
9 in the purpose of use; (g) whether the proposed transfer or change
10 is to be permanent or temporary and, if temporary, the duration
11 of the proposed transfer or change; and (h) any other information
12 the director deems relevant and essential to provide the interested
13 public with adequate notice of the proposed transfer or change.

14 (4) The notice shall state (a) that any interested person
15 may object to and request a hearing on the application by filing
16 such objections in writing specifically stating the grounds for
17 each objection and (b) that any such objection and request shall be
18 filed in the office of the department within two weeks after the
19 date of final publication of the notice.

20 (5) Within the time period allowed by this section for
21 the filing of objections and requests for hearings, the county
22 board of any county containing land to which the appropriation
23 is appurtenant and, if applicable, the county board of any county
24 containing land to which the appropriation is proposed to be
25 transferred may provide the department with comments about the

1 potential economic impacts of the proposed transfer or change in
2 such county. The filing of any such comments by a county board
3 shall not make the county a party in the application process, but
4 such comments shall be considered by the director in determining
5 pursuant to section 46-294 whether the proposed transfer or change
6 is in the public interest.

7 Sec. 3. Section 46-701, Revised Statutes Cumulative
8 Supplement, 2008, is amended to read:

9 46-701 Sections 46-701 to 46-754 and section 7 of this
10 act shall be known and may be cited as the Nebraska Ground Water
11 Management and Protection Act.

12 Sec. 4. Section 46-706, Revised Statutes Cumulative
13 Supplement, 2008, is amended to read:

14 46-706 For purposes of the Municipal and Rural Domestic
15 Ground Water Transfers Permit Act, the Nebraska Ground Water
16 Management and Protection Act, and sections 46-601 to 46-613.02,
17 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
18 requires:

19 (1) Person means a natural person, a partnership,
20 a limited liability company, an association, a corporation, a
21 municipality, an irrigation district, an agency or a political
22 subdivision of the state, or a department, an agency, or a bureau
23 of the United States;

24 (2) Ground water means that water which occurs in or
25 moves, seeps, filters, or percolates through ground under the

1 surface of the land;

2 (3) Contamination or contamination of ground water means
3 nitrate nitrogen or other material which enters the ground water
4 due to action of any person and causes degradation of the quality
5 of ground water sufficient to make such ground water unsuitable for
6 present or reasonably foreseeable beneficial uses;

7 (4) District means a natural resources district operating
8 pursuant to Chapter 2, article 32;

9 (5) Illegal water well means (a) any water well operated
10 or constructed without or in violation of a permit required by
11 the Nebraska Ground Water Management and Protection Act, (b) any
12 water well not in compliance with rules and regulations adopted and
13 promulgated pursuant to the act, (c) any water well not properly
14 registered in accordance with sections 46-602 to 46-604, or (d)
15 any water well not in compliance with any other applicable laws of
16 the State of Nebraska or with rules and regulations adopted and
17 promulgated pursuant to such laws;

18 (6) To commence construction of a water well means the
19 beginning of the boring, drilling, jetting, digging, or excavating
20 of the actual water well from which ground water is to be
21 withdrawn;

22 (7) Management area means any area so designated by a
23 district pursuant to section 46-712 or 46-718, by the Director
24 of Environmental Quality pursuant to section 46-725, or by
25 the Interrelated Water Review Board pursuant to section 46-719.

1 Management area includes a control area or a special ground water
2 quality protection area designated prior to July 19, 1996;

3 (8) Management plan means a ground water management plan
4 developed by a district and submitted to the Director of Natural
5 Resources for review pursuant to section 46-711;

6 (9) Ground water reservoir life goal means the finite or
7 infinite period of time which a district establishes as its goal
8 for maintenance of the supply and quality of water in a ground
9 water reservoir at the time a ground water management plan is
10 adopted;

11 (10) Board means the board of directors of a district;

12 (11) Acre-inch means the amount of water necessary to
13 cover an acre of land one inch deep;

14 (12) Subirrigation or subirrigated land means the natural
15 occurrence of a ground water table within the root zone of
16 agricultural vegetation, not exceeding ten feet below the surface
17 of the ground;

18 (13) Best management practices means schedules of
19 activities, maintenance procedures, and other management practices
20 utilized for purposes of irrigation efficiency, to conserve or
21 effect a savings of ground water, or to prevent or reduce present
22 and future contamination of ground water. Best management practices
23 relating to contamination of ground water may include, but not
24 be limited to, irrigation scheduling, proper rate and timing
25 of fertilizer application, and other fertilizer and pesticide

1 management programs. In determining the rate of fertilizer
2 application, the district shall consult with the University of
3 Nebraska or a certified crop advisor certified by the American
4 Society of Agronomy;

5 (14) Point source means any discernible, confined, and
6 discrete conveyance, including, but not limited to, any pipe,
7 channel, tunnel, conduit, well, discrete fissure, container,
8 rolling stock, vessel, other floating craft, or other conveyance,
9 over which the Department of Environmental Quality has regulatory
10 authority and from which a substance which can cause or contribute
11 to contamination of ground water is or may be discharged;

12 (15) Allocation, as it relates to water use for
13 irrigation purposes, means the allotment of a specified total
14 number of acre-inches of irrigation water per irrigated acre per
15 year or an average number of acre-inches of irrigation water per
16 irrigated acre over any reasonable period of time;

17 (16) Rotation means a recurring series of use and nonuse
18 of irrigation wells on an hourly, daily, weekly, monthly, or yearly
19 basis;

20 (17) Water well has the same meaning as in section
21 46-601.01;

22 (18) Surface water project sponsor means an irrigation
23 district created pursuant to Chapter 46, article 1, a reclamation
24 district created pursuant to Chapter 46, article 5, or a public
25 power and irrigation district created pursuant to Chapter 70,

1 article 6;

2 (19) Beneficial use means that use by which water may be
3 put to use to the benefit of humans or other species;

4 (20) Consumptive use means the amount of water that is
5 consumed under appropriate and reasonably efficient practices to
6 accomplish without waste the purposes for which the appropriation
7 or other legally permitted use is lawfully made;

8 (21) Dewatering well means a well constructed and used
9 solely for the purpose of lowering the ground water table
10 elevation;

11 (22) Emergency situation means any set of circumstances
12 that requires the use of water from any source that might
13 otherwise be regulated or prohibited and the agency, district,
14 or organization responsible for regulating water use from such
15 source reasonably and in good faith believes that such use is
16 necessary to protect the public health, safety, and welfare,
17 including, if applicable, compliance with federal or state water
18 quality standards;

19 (23) Good cause shown means a reasonable justification
20 for granting a variance for a consumptive use of water that
21 would otherwise be prohibited by rule or regulation and which the
22 granting agency, district, or organization reasonably and in good
23 faith believes will provide an economic, environmental, social, or
24 public health and safety benefit that is equal to or greater than
25 the benefit resulting from the rule or regulation from which a

1 variance is sought;

2 (24) Historic consumptive use means the amount of water
3 that has previously been consumed under appropriate and reasonably
4 efficient practices to accomplish without waste the purposes for
5 which the appropriation or other legally permitted use was lawfully
6 made;

7 (25) Monitoring well means a water well that is designed
8 and constructed to provide ongoing hydrologic or water quality
9 information and is not intended for consumptive use;

10 (26) Order, except as otherwise specifically provided,
11 includes any order required by the Nebraska Ground Water Management
12 and Protection Act, by rule or regulation, or by a decision adopted
13 by a district by vote of the board of directors of the district
14 taken at any regularly scheduled or specially scheduled meeting of
15 the board;

16 (27) Overall difference between the current and fully
17 appropriated levels of development means the extent to which
18 existing uses of hydrologically connected surface water and ground
19 water and conservation activities result in the water supply
20 available for purposes identified in subsection (3) of section
21 46-713 to be less than the water supply available if the
22 river basin, subbasin, or reach had been determined to be fully
23 appropriated in accordance with section 46-714;

24 (28) Test hole means a hole designed solely for the
25 purposes of obtaining information on hydrologic or geologic

1 conditions; ~~and~~

2 (29) Variance means (a) an approval to deviate from a
3 restriction imposed under subsection (1), (2), (9), or (10) of
4 section 46-714 or (b) the approval to act in a manner contrary to
5 existing rules or regulations from a governing body whose rule or
6 regulation is otherwise applicable; ~~-~~

7 (30) Certified irrigated acres means the number of acres
8 reported by a landowner to a district, pursuant to rules adopted
9 by the district, that are capable of being supplied water through
10 irrigation works, mechanisms, or facilities; and

11 (31) Certified water uses means beneficial uses of water
12 for purposes other than irrigation identified by a district
13 pursuant to rules adopted by the district.

14 Sec. 5. Section 46-707, Revised Statutes Cumulative
15 Supplement, 2008, is amended to read:

16 46-707 (1) Regardless of whether or not any portion of
17 a district has been designated as a management area, in order
18 to administer and enforce the Nebraska Ground Water Management
19 and Protection Act and to effectuate the policy of the state to
20 conserve ground water resources, a district may:

21 (a) Adopt and promulgate rules and regulations necessary
22 to discharge the administrative duties assigned in the act;

23 (b) Require such reports from ground water users as may
24 be necessary;

25 (c) Require landowners and others with control over uses

1 of water to certify water uses and irrigated acres;

2 ~~(e)~~ (d) Require meters to be placed on any water wells
3 for the purpose of acquiring water use data;

4 ~~(d)~~ (e) Require decommissioning of water wells that are
5 not properly classified as active status water wells as defined in
6 section 46-1204.02 or inactive status water wells as defined in
7 section 46-1207.02;

8 ~~(e)~~ (f) Conduct investigations and cooperate or contract
9 with agencies of the United States, agencies or political
10 subdivisions of this state, public or private corporations, or
11 any association or individual on any matter relevant to the
12 administration of the act;

13 ~~(f)~~ (g) Report to and consult with the Department
14 of Environmental Quality on all matters concerning the entry
15 of contamination or contaminating materials into ground water
16 supplies; and

17 ~~(g)~~ (h) Issue cease and desist orders, following ten
18 days' notice to the person affected stating the contemplated action
19 and in general the grounds for the action and following reasonable
20 opportunity to be heard, to enforce any of the provisions of the
21 act or of orders or permits issued pursuant to the act, to initiate
22 suits to enforce the provisions of orders issued pursuant to the
23 act, and to restrain the construction of illegal water wells or the
24 withdrawal or use of water from illegal water wells.

25 Before any rule or regulation is adopted pursuant to this

1 subsection, a public hearing shall be held within the district.
2 Notice of the hearing shall be given as provided in section 46-743.

3 (2) In addition to the powers enumerated in subsection
4 (1) of this section, a district may impose an immediate temporary
5 stay for a period of one hundred eighty days on the construction
6 of any new water well and on any increase in the number of
7 acres historically irrigated, without prior notice or hearing, upon
8 adoption of a resolution by the board finding that such temporary
9 immediate stay is necessary. The district shall hold at least
10 one public hearing on the matter within the district during such
11 one hundred eighty days, with the notice of the hearing given
12 as provided in section 46-743, prior to making a determination
13 as to imposing a permanent stay or conditions in accordance with
14 subsections (1) and (6) of section 46-739. Within forty-five days
15 after a hearing pursuant to this subsection, the district shall
16 decide whether to exempt from the immediate temporary stay the
17 construction of water wells for which permits were issued prior
18 to the date of the resolution commencing the stay but for which
19 construction had not begun prior to such date. If construction of
20 such water wells is allowed, all permits that were valid when the
21 stay went into effect shall be extended by a time period equal to
22 the length of the stay and such water wells shall otherwise be
23 completed in accordance with section 46-738. Water wells listed in
24 subsection (3) of section 46-714 and water wells of public water
25 suppliers are exempt from this subsection.

1 Sec. 6. Section 46-739, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 46-739 (1) A district in which a management area has
4 been designated shall by order adopt one or more of the following
5 controls for the management area:

6 (a) It may allocate the amount of ground water that may
7 be withdrawn by ground water users;

8 (b) It may adopt a system of rotation for use of ground
9 water;

10 (c) It may adopt well-spacing requirements more
11 restrictive than those found in sections 46-609 and 46-651;

12 (d) It may require the installation of devices for
13 measuring ground water withdrawals from water wells;

14 (e) It may adopt a system which requires reduction of
15 irrigated acres pursuant to subsection (2) of section 46-740;

16 (f) It may limit or prevent the expansion of irrigated
17 acres or otherwise limit or prevent increases in the consumptive
18 use of ground water withdrawals from water wells used for
19 irrigation or other beneficial purposes;

20 (g) It may require the use of best management practices;

21 (h) It may require the analysis of water or deep soils
22 for fertilizer and chemical content;

23 (i) It may impose mandatory educational requirements
24 designed to protect water quality or to stabilize or reduce the
25 incidence of ground water depletion, conflicts between ground water

1 users and surface water appropriators, disputes over interstate
2 compacts or decrees, or difficulties fulfilling the provisions of
3 other formal state contracts or agreements;

4 (j) It may require water quality monitoring and reporting
5 of results to the district for all water wells within all or part
6 of the management area;

7 (k) It may require district approval of (i) transfers of
8 ground water off the land where the water is withdrawn, ~~or~~ (ii)
9 transfers of rights to use ground water that result from district
10 allocations imposed pursuant to subdivision (1)(a) of this section
11 or from other restrictions on use that are imposed by the district
12 in accordance with this section, (iii) transfers of certified
13 water uses or certified irrigated acres between landowners or other
14 persons, or (iv) transfers of certified water uses or certified
15 irrigated acres between parcels or tracts under the control of a
16 common landowner or other person. Such approval may be required
17 whether the transfer is within the management area, from inside
18 to outside the management area, or from outside to inside the
19 management area, except that transfers for which permits have been
20 obtained from the Department of Natural Resources prior to July 16,
21 2004, or pursuant to the Municipal and Rural Domestic Ground Water
22 Transfers Permit Act shall not be subject to district approval
23 pursuant to this subdivision. If the district adopts rules and
24 regulations pursuant to this subdivision, such regulations shall
25 require that the district deny or condition the approval of any

1 such transfer when and to the extent such action is necessary to
2 (A) ensure the consistency of the transfer with the purpose or
3 purposes for which the management area was designated, (B) prevent
4 adverse effects on other ground water users or on surface water
5 appropriators, (C) prevent adverse effects on the state's ability
6 to comply with an interstate compact or decree or to fulfill the
7 provisions of any other formal state contract or agreement, and (D)
8 otherwise protect the public interest and prevent detriment to the
9 public welfare. Approval of any transfer of certified water uses
10 or certified irrigated acres under subdivision (1)(k)(iii) or (iv)
11 of this section shall further be subject to the district having
12 complied with the requirements of section 7 of this act;

13 (l) It may require, when conditions so permit, that
14 new or replacement water wells to be used for domestic or other
15 purposes shall be constructed to such a depth that they are less
16 likely to be affected by seasonal water level declines caused by
17 other water wells in the same area;

18 (m) It may close all or a portion of the management
19 area to the issuance of additional permits or may condition the
20 issuance of additional permits on compliance with other rules and
21 regulations adopted and promulgated by the district to achieve the
22 purpose or purposes for which the management area was designated;
23 and

24 (n) It may adopt and promulgate such other reasonable
25 rules and regulations as are necessary to carry out the purpose for

1 which a management area was designated.

2 (2) In adopting, amending, or repealing any control
3 authorized by subsection (1) of this section or sections 46-740
4 and 46-741, the district's considerations shall include, but not
5 be limited to, whether it reasonably appears that such action will
6 mitigate or eliminate the condition which led to designation of the
7 management area or will improve the administration of the area.

8 (3) Upon request by the district or when any of
9 the controls being proposed are for the purpose of integrated
10 management of hydrologically connected ground water and surface
11 water, the Director of Natural Resources shall review and comment
12 on the adoption, amendment, or repeal of any authorized control
13 in a management area. The director may hold a public hearing to
14 consider testimony regarding the control prior to commenting on the
15 adoption, amendment, or repeal of the control. The director shall
16 consult with the district and fix a time, place, and date for
17 such hearing. In reviewing and commenting on an authorized control
18 in a management area, the director's considerations shall include,
19 but not be limited to, those enumerated in subsection (2) of this
20 section.

21 (4) If because of varying ground water uses, varying
22 surface water uses, different irrigation distribution systems, or
23 varying climatic, hydrologic, geologic, or soil conditions existing
24 within a management area the uniform application throughout such
25 area of one or more controls would fail to carry out the intent

1 of the Nebraska Ground Water Management and Protection Act in a
2 reasonably effective and equitable manner, the controls adopted
3 by the district pursuant to this section may contain different
4 provisions for different categories of ground water use or portions
5 of the management area which differ from each other because of
6 varying climatic, hydrologic, geologic, or soil conditions. Any
7 differences in such provisions shall recognize and be directed
8 toward such varying ground water uses or varying conditions. Except
9 as otherwise provided in this section, if the district adopts
10 different controls for different categories of ground water use,
11 those controls shall be consistent with section 46-613 and shall,
12 for each such category, be uniform for all portions of the area
13 which have substantially similar climatic, hydrologic, geologic,
14 and soil conditions.

15 (5) The district may establish different water
16 allocations for different irrigation distribution systems.

17 (6)(a) The district may establish different provisions
18 for different hydrologic relationships between ground water and
19 surface water.

20 (b) For management areas a purpose of which is the
21 integrated management of hydrologically connected ground water and
22 surface water, the district may establish different provisions for
23 water wells either permitted or constructed before the designation
24 of a management area for integrated management of hydrologically
25 connected ground water and surface water and for water wells

1 either permitted or constructed on or after the designation date
2 or any other later date or dates established by the district.
3 Permits for construction of new wells not completed by the date
4 of the determination of fully appropriated shall be subject to any
5 conditions imposed by the applicable natural resources district.

6 (c) For a management area in a river basin or part
7 of a river basin that is or was the subject of litigation over
8 an interstate water compact or decree in which the State of
9 Nebraska is a named defendant, the district may establish different
10 provisions for restriction of water wells constructed after January
11 1, 2001, if such litigation was commenced before or on May 22,
12 2001. If such litigation is commenced after May 22, 2001, the
13 district may establish different provisions for restriction of
14 water wells constructed after the date on which such litigation
15 is commenced in federal court. An appeal from a decision of
16 the district under this subdivision shall be in accordance with
17 the hearing procedures established in the Nebraska Ground Water
18 Management and Protection Act.

19 (d) Except as otherwise authorized by law, the district
20 shall make a replacement water well as defined in section 46-602,
21 or as further defined in district rules and regulations, subject to
22 the same provisions as the water well it replaces.

23 (7) If the district has included controls delineated in
24 subdivision (1)(m) of this section in its management plan, but has
25 not implemented such controls within two years after the initial

1 public hearing on the controls, the district shall hold a public
2 hearing, as provided in section 46-712, regarding the controls
3 before implementing them.

4 (8) In addition to the controls listed in subsection
5 (1) of this section, a district in which a management area has
6 been designated may also adopt and implement one or more of the
7 following measures if it determines that any such measures would
8 help the district and water users achieve the goals and objectives
9 of the management area: (a) It may sponsor nonmandatory educational
10 programs; and (b) it may establish and implement financial or
11 other incentive programs. As a condition for participation in
12 an incentive program, the district may require water users or
13 landowners to enter into and perform such agreements or covenants
14 concerning the use of land or water as are necessary to produce
15 the benefits for which the incentive program is established and
16 shall further condition participation upon satisfaction of the
17 requirements of section 7 of this act.

18 Sec. 7. Notwithstanding any other provision of law, no
19 district shall approve a transfer of certified water uses or
20 certified irrigated acres or allow a water user or landowner to
21 participate in a financial or other incentive program established
22 pursuant to subsection (8) of section 46-739 unless the person
23 seeking such transfer or participation in such program has
24 submitted to the district a report of title issued by an attorney
25 or a licensed abstractor, on a form prescribed by the department

1 pursuant to subdivision (1)(b) of section 46-290, reflecting (a)
2 the owner and legal description of the land from which the
3 certified water uses or certified irrigated acres are to be
4 transferred or which is the subject of such program and (b) the
5 existence of all liens, evidenced by the filing of a mortgage,
6 trust deed, or other equivalent consensual security interest,
7 against the land from which the certified water uses or certified
8 irrigated acres are to be transferred or which is the subject of
9 such program and the name and address of each such lienholder,
10 if any. If the report of title reflects the existence of any
11 lien evidenced by the filing of a mortgage, trust deed, or other
12 equivalent security interest, written consent to such transfer or
13 participation in such program shall be obtained from each such
14 lienholder. The district may assess a fee against the person
15 seeking such transfer or participation in such program to recoup
16 its costs in reviewing the report of title.

17 Approval of a transfer of certified water uses or
18 certified irrigated acres or authorization of a water user or
19 landowner to participate in such financial or other incentive
20 program by a district shall not affect the rights of any lienholder
21 who is not reflected in the report of title and from whom the
22 required consent was not obtained. Such a lienholder may bring an
23 action against the person seeking such transfer or participation
24 in such program for damages or injunctive or other relief for any
25 injury done to the lienholder's interest in land or water rights

1 resulting from such transfer or participation.

2 This section does not limit the right to resort to other
3 means of review, redress, or relief provided by law.

4 Sec. 8. An instrument of transfer of water rights shall
5 be recorded by a natural resources district with the register of
6 deeds in each county in which is situated the real estate, or
7 any part thereof, from which a transfer of certified water uses
8 or certified irrigated acres occurred, in any case in which a
9 transfer of certified water uses or certified irrigated acres has
10 been approved by such district. The instrument of transfer of
11 water rights shall include a description of the real estate to
12 and from which the certified water uses or certified irrigated
13 acres were transferred, the date on which the transfer occurred,
14 and a statement that all lienholders evidenced by the filing of a
15 mortgage, trust deed, or other equivalent security interest against
16 the real estate from which the certified water uses or certified
17 irrigated acres were transferred, if any, have consented in writing
18 to such transfer. The district may recover the cost of filing an
19 instrument of transfer of water rights from the person seeking
20 the transfer. The instrument of water transfer shall be executed,
21 acknowledged, and recorded in the same manner as other conveyances
22 of real estate.

23 Sec. 9. Original sections 46-290, 46-291, 46-701, 46-706,
24 46-707, and 46-739, Revised Statutes Cumulative Supplement, 2008,
25 are repealed.